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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,256	11/01/2000	Paul Danton Huish	04193.009/1344.1P	3351

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EXAMINER
DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/704,256	HUISH ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 May 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. Claims 1-21 are pending. Applicant's amendments and arguments filed 5/28/03 have been entered.

Objections/Rejections Withdrawn

2. The following objections/rejections as set forth in Paper #15 have been withdrawn:

The rejection of claims 1-5 and 16-20 under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 USC 103 as obvious over Rolfes (US 5,972,861) has been withdrawn.

The rejection of Claims 1, 4, 5-10, and 13-19 under 35 USC 103 as being unpatentable over EP 336,740 has been withdrawn.

The rejection of claims 1-20 under 35 USC 103 as being unpatentable over Kaminsky (US 4,487,710) has been withdrawn.

The rejection of claims 8 and 15 under 35 USC 103 as being unpatentable over Rolfes (US 5,972,861) has been withdrawn.

The rejection of claim 6 under 35 USC 103 as being unpatentable over Rolfes (US 5,972,861) as applied to claims 1-5 and 16-20 above, and further in view of Kaminsky (US 4,487,710) or EP 336,740 has been withdrawn.

The rejection of claims 1-21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,057,280 has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emery et al (US 6,303,358).

Emery et al teach provide a particulate detergent composition or component having a bulk density of at least 600 g/l and comprising at least 10% by weight of detergent surfactant and from 10 to 70%by weight of detergency builder, the detergent composition or component being composed of at least two and preferably at least three, granular components: granules comprising at least 60% by weight of anionic surfactant, granules comprising at least 20% by weight nonionic surfactant and less than 10% by

weight aluminosilicate and, optionally, granules comprising up to 100% by weight of detergency builder and optionally from 0 to 10% of nonionic or anionic surfactant. See column 2, lines 5-20. Other detergent ingredients may be postdosed to the composition in order to provide detergent benefits. These ingredients include bleach precursors, alkali metal carbonates, water-soluble crystalline or amorphous alkaline metal silicates, anti-redeposition agents, foam control agents, foam boosters, etc. See column 4, line 55 to column 5, line 5.

Suitable anionic surfactants include fatty ester sulphonates, C8-C15 primary and secondary alkylsulphates, etc. Suitable nonionic surfactants include primary and secondary alcohol ethoxylates, especially the C8-C20 aliphatic alcohols ethoxylated with an average of from 1 to 20 moles of ethylene oxide per mole of alcohol. See column 5, lines 40-60. The particles may be coated with a layering agent. See column 3, lines 10-45.

Emery et al do not specifically teach a granular or powdered detergent composition having reduced di-salt formation containing first particles comprising alpha-sulfofatty acid ester, second particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a granular or powdered detergent composition having reduced di-salt formation containing first particles comprising alpha-sulfofatty acid ester,

second particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of Emery et al suggest a granular or powdered detergent composition having reduced di-salt formation containing first particles comprising alpha-sulfofatty acid ester, second particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/574764 (US 6,534,464). Although the conflicting claims

are not identical, they are not patentably distinct from each other because claims 1-24 of 09/574764 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

With respect to Emery, Applicant states that Emery does not appear to address the problem of disalt formation by alpha-sulfofatty acid esters and that aluminosilicates, which can cause di-salt formation may be included in the anionic granules. Additionally, Applicant states that Emery makes only a passing reference to fatty acid ester sulfonates and is silent as to which sulfonates may be used. In response, note that, the Examiner maintains that the compositions as suggested by Emery would have the same di-salt formation properties as those recited by the instant claims because Emery teaches compositions containing the same components in the same proportions as recited by the instant claims. Note that, the claims recite "substantially free" of components that cause more than a minor amount of additional di-salt formation which would permit the inclusion of components such as aluminosilicates. Furthermore, the anionic granules may contain 0% of detergent builder. Note that, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972). See MPEP 2144. Additionally, note that, the Examiner maintains that Emery would suggest C16 to C18

fatty acid ester sulfonates because Emery teaches that suitable anionic surfactants include fatty acid ester sulfonates. Note that, Applicant has provided no evidence or data showing the criticality with respect to C16 to C18 ester sulfonates.

With respect to the double patenting rejections set forth in Paper #6, Applicant has not submitted any terminal disclaimers and the rejection(s) have been maintained for the reasons of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. 8:30 thru 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone

numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GREGORY DELCOTTO
PRIMARY EXAMINER

GRD
August 10, 2003